The Solicitors' Journal

VOL. 91 — Saturday, October 11, 1947 — No. 39

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CURRENT TOPICS

Sir William Francis Kyffin Taylor, K.C.

THE Hon. Sir WILLIAM FRANCIS KYFFIN TAYLOR, G.B.E., K.C., D.L., called to the Bar in 1879 and now ninety-three years of age, has retired from his position as chairman of Shropshire Quarter Sessions. On 30th September a portrait of Sir William, by Mr. OSWALD BIRLEY, was presented to him on his retirement. Since 1903 Sir William has been presiding judge at the Liverpool Court of Passage, and since 1930 he has been a railway and canal commissioner. He took silk in 1895, and became Recorder of Bolton in 1901, a Bencher of the Middle Temple in 1905 and Treasurer in 1926. From 1918 to 1921 he was Judge of Appeal of the Isle of Man. This wonderful elder, whose wise counsel and judicial experience is still at the disposal of the community, and whose intellectual powers shine as brightly as ever they did, is the oldest of our English barristers and judges. He provides an argument against the often repeated but debatable assertion that a retiring age is necessary for magistrates. Those who have appeared before Sir William on the bench—and their number is legion—can testify not only to his equable and equitable administration of justice, but also to the kindness and encouragement which he generously shows to the young and inexperienced. Advocacy is a highly skilled and difficult craft, and both encouragement and discouragement can affect its development. Not least of Sir William's gifts is his power to give praise where it is due and needed.

Mr. J. B. Sandbach, K.C.

THERE is always something heartening, especially in these days, in witnessing the administration of justice by a cheerful and kindly man who is at the same time a shrewd judge of his fellow men. Such a man is Mr. JOHN BROWN SANDBACH, K.C., whose retirement as a metropolitan police magistrate took place on 4th October, twenty-one years after his appointment. The occasion of his retirement was marked by a ceremony which may well be unique in the history of the metropolitan magistrates' courts. A deputation of licensed street traders representing, among others, persons who had appeared before him on charges of obstruction, attended the court in order to present him with an antique silver snuff-box with the legend engraved on it: "To Mr. J. B. Sandbach, K.C.—a grand old English gentleman. From the street traders of the West End. October, 1947." Mr. Sandbach thanked the deputation, and promised to keep the snuff-box in his family as an heirloom. He said he would think with affection of his friends, the "barrow-boys." Tributes were also paid by members of the legal profession, officials of the court and the police. All who have ever attended his court, whether as advocates or in any other capacity, will join in the sentiments expressed on the snuff-box and will wish Mr. Sandbach many years of health and happiness. Mr. H. F. R. STURGE, who was called to the Bar in 1925 by the Inner Temple, has been appointed to succeed him.

Michaelmas Law Sittings

THE Michaelmas Law Sittings will begin on 13th October with increases of business in all divisions as compared with the corresponding date last year. The increase in the King's Bench Division is 51, the figure this year being 486, of which 16 are to be tried with a common jury. There are 176 long non-jury actions and 272 short non-jury actions, 10 cases in the commercial list and 12 short causes. In the Chancery Division the increase is 94, the total this year being 238, consisting of 90 non-witness and 109 witness actions and 39 other matters. Mr. Justice WYNN PARRY will take the 91 companies matters. There are four appeals and motions in bankruptcy. There are six Admiralty actions for trial. The increase in the Divisional Court is 85. The list proper contains 29 appeals. There are 20 Revenue appeals, 156 under the Pensions Appeal Tribunals Act, 1943, 16 under the Town and Country Planning Acts, 1932 to 1944, two under the Housing Acts, 1925 to 1936, and one under the Public Works Facilities Act, 1930. In the Court of Appeal the total is 345, of which 337 are final appeals, as against 240 at the corresponding date last year. Of the final appeals there are nine from the Chancery Division, 124 from the King's Bench Division, 13 of which are in the Revenue Paper, 75 from the Probate, Divorce and Admiralty Division, of which five are Admiralty appeals, and 129 are county court appeals, 17 of which are under the Workmen's Compensation Acts.

Exchange Control Rules: Indorsements on Writs, etc.

THE Supreme Court Rules which came into operation on 1st October (S. R. & O., 1947, No. 1920/L.27, *ante*, p. 506) relate *inter alia* to indorsements on writs in the limited class of cases where a party is resident outside the scheduled territories under the Exchange Control Act, 1947. Where this is the case the fact must be stated in the indorsement, and where the claim is liquidated the indorsement must also state that the defendant can pay the amount claimed and costs into court where the plaintiff is resident outside the scheduled territories, and that he shall give notice to the plaintiff of such payment in the form appended to the rules. These new rules involve an amendment to Ord. III, and Ord. XXII is also amended by the addition of a new r. 22, which provides that if any person in whose favour an order for payment out of court is sought is resident outside the scheduled territories, the summons must say so, and must also state whether Treasury permission has been given for the payment out, and if the permission was conditional,

whether the condition was complied with. Order XLII is also amended to provide that payment into court shall be a good discharge where Treasury consent to payment to a person outside the scheduled territories has been refused. The *præcipe* for a writ of execution must be indorsed with the prescribed form of certificate that Treasury consent has been unconditionally granted, if such is the fact, or that conditions on which it has been granted have been complied with. The written Treasury permission must be produced to the officer at the time of issuing execution. A new Ord. L, r. 17A, provides that, where no Treasury consent is given in the case of a judgment creditor residing outside the scheduled territories, an order for the appointment of a receiver by way of an equitable execution shall direct the receiver to pay the money into court.

Time Limits for Appearances, etc.

WE referred in a "Topic" in our issue of 27th September (*ante*, p. 511) to the fact that r. 2 of the R.S.C. (No. 1), 1947 (*ante*, p. 119), revokes r. 1 of the R.S.C. (No. 8), 1940, as from 12th October next. The practical effect of this is important for solicitors engaged in High Court litigation. The revoked r. 1 of the 1940 rules was a comprehensive relaxation of all time limits for doing any acts or taking any proceedings required by the Rules of the Supreme Court to be done or taken. Where the specified number of days in the time limit was less than six, that number was doubled, and if it was six or more days, the specified number became increased by four. Every specified number of hours was doubled by the 1940 rule. The entry of appearances to writs and summonses is, of course, the example that immediately comes to mind, and solicitors will no doubt note the change in practice as from 12th October, more particularly as the 1947 rules provide that in the forms of writ of summons and originating summons to which an appearance is required to be entered within twelve days of service, "eight days" shall be substituted for "twelve days." It is clearly, therefore, the intention of the rule that where a writ or summons has been served before 12th October, the time limit for entering an appearance should still be twelve days, and that the old rule applies also to other time limits which have begun to run but are not completed on 12th October. No doubt *ex abundanti cautela* solicitors will strive to observe the shortened time limits even in those cases.

Damage to a Castle

A DETAILED report of an interesting claim heard on 11th September by the General Claims Tribunal appears in the *Estates Gazette* of 27th September. The subject of the claim was Lawrence Castle, Lower Ashton, Devon. Under s. 2 (1) (*a*) of the Compensation (Defence) Act, 1939, £170 per annum was claimed, and the amount claimed under s. 2 (1) (*b*) as the cost of making good damage was £3,191. The castle was built in 1788, and was a show place into which members of the public were admitted at a charge of threepence. Requisitions by the War Office occurred and operated from July, 1940, to December, 1941, and February to December, 1944. The owner claimed compensation from December, 1941, onwards, because the War Office had left certain property, including an iron-legged table and some duckboards, on the premises. Rent was also claimed from December, 1944, onwards, owing to the alleged failure to surrender a key. Rent was being claimed at the rate of £170 per annum, that being the average figure taken from visitors to the building during four years before the war. Serious damage to an Adam staircase and destruction of an Adam mantelpiece were alleged. The castle was bought with 9 acres for £650 in 1933. The authority estimated the damage at £253, and made an offer of £300. The valuer stated that between 1919 and 1939 it was once sold by an architect for £400 with 20 acres. That could hardly have occurred if there had been special Adam features in the house. The tribunal awarded the claimant £5 for the period from February to December, 1944, under s. 2 (1) (*a*), £400 under s. 2 (1) (*b*) and £10 10s. costs for the hearing and all interlocutory applications.

National Health Service (Superannuation) Regulations, 1947

THE new National Health Service (Superannuation) Regulations, 1947 (S. R. & O., 1947, No. 1755), set up a superannuation scheme for the staff employed in the new health service otherwise than by the local health authorities. The regulations are of interest to local authorities generally in the arrangements they make for interchange between the new scheme and the local government superannuation scheme, to authorities from which hospitals will be transferred by virtue of the special transfer arrangements, and to local health and local education authorities. The Ministry issued an explanatory circular (148/47) on 30th September. It states that, generally, the scheme is actuarially equivalent to the scheme in the Local Government Superannuation Act, 1937. The circular sets out with admirable clarity the matters which are of interest to local authorities generally and to authorities from which institutions will be transferred.

Labour Direction

FURTHER and better particulars of the principles on which the employment exchanges will administer the Control of Engagement Order, 1947, which came into force on 6th October, were given by the Ministry of Labour on 3rd October. The local offices have been instructed to offer vacancies in the first preference list before others. This includes coal mining, agriculture, iron and steel, cotton and wool, certain special classes of work such as the development of atomic energy and the manufacture of equipment for deep mining, and other individual cases where the regional controller, or in certain cases the district officer, considers that urgent and important work is seriously retarded by a shortage of a small number of workers. Among the two lists of first priority occupations, other than those mentioned, it will please all persons connected with professional work that the trade of printing and bookbinding is in list "A." The shortage of text-books and the stringency of the paper situation as regards periodicals have been factors operating against efficiency. A mitigation, however slight, of the labour situation in that field of work will be especially welcome. Sir HAROLD WILES, deputy secretary to the Ministry, said that the Government wanted to move a large number of workers from the distributive trades to the manufacturing industries, and while public utilities are regarded as essential, vacancies in their showrooms will be regarded as in retail industry. Employers of labour should be advised to procure the lists for themselves from the Ministry of Labour.

The Canadian Constitution

A CHANGE of some constitutional importance in the legal powers of the Governor-General of Canada has been created by the new letters patent recently signed by His Majesty, which came into force on 1st October. The practical changes are small. The King's prerogatives are not in any way limited by the new letters patent, and the Governor-General is authorised to exercise on the advice of Canadian Ministers all His Majesty's powers and authorities in respect of Canada. The practice of the Canadian Government in submitting matters to the King personally will remain unchanged, but it will be legally possible for the Governor-General to exercise any of the powers and authorities of the Crown in respect of Canada without the necessity of a submission to His Majesty. Among new powers and authorities included in a general clause are the royal full powers for the signing of treaties, the ratification of treaties and the issuance of letters of credence to ambassadors. In any prerogative matter the Canadian Government will decide whether a submission should be made to the Governor-General or to His Majesty. The new letters patent may be regarded as a further implementation, in terms of practical change, of the Statute of Westminster, 1931, which laid down in general terms the form of the future British Commonwealth of Nations. The shifting of emphasis from power and sovereignty to free co-operation in an association of free peoples is a bright feature in an otherwise unfortunate international situation.

TWO OR MORE TORTFEASORS—I

PART II of the Law Reform (Married Women and Tortfeasors) Act, 1935, which is the part dealing with the second class of "eccentrics" designated parenthetically in the short title, came into force on 1st November, 1935. It is therefore at first sight a little surprising to find reported in 1947 a case which concerns the position of joint tortfeasors at common law, and in which it is expressly stated by Somervell, L.J., that the Act of 1935 does not in any way come into the argument. One explanation, of course, is that the torts alleged were committed before the coming into operation of the Act. Moreover, the case (*Apley Estates Co. and Others* v. *De Bernales and Others* [1947] Ch. 217) covers a point which seems to be quite outside the Act itself, a proposition which will be examined in a later article. Apart from this, the case serves as a useful reminder of the position between tortfeasors liable either jointly or independently in respect of the same tort, and provides a convenient opportunity to take stock of a few of the decisions on the subject which have been reported in the last twelve years.

It will be recalled that at common law (apart from certain instances in which a person had innocently committed a tort under the direction or through what may be called the unauthorised agency of another, when there was normally a right of indemnity) no indemnity or contribution as such existed between joint tortfeasors. Further, if a plaintiff recovered judgment against one of two or more joint tortfeasors, that judgment, even though unsatisfied, operated as a bar to any subsequent action against another. This was because against any number of persons who jointly committed a tort there could be only one cause of action, which became merged in a judgment. But this position, though theoretically sound, was practically inconvenient and anomalous, and so the Law Reform Act of 1935 provided by s. 6:—

> "(1) Where damage is suffered by any person as a result of a tort (whether a crime or not):
>
> (*a*) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;
>
> * * * * *
>
> (*c*) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought."

It will be noted that on the wording of subs. (*c*) the right of contribution is not confined to joint tortfeasors, so that, for instance, two persons each uttering a slander, though they commit independent torts, may conceivably be "liable in respect of the same damage" and could normally claim to have the liability apportioned between them (cf. *The Koursk* [1924] P. 140).

Further, the subsection refers in terms only to the recovery of *contribution* and goes on to exclude recovery from a person entitled to an indemnity. In reliance on this wording, an attempt was made in *Ryan* v. *Fildes and Others* [1938] 3 All E.R. 517, to establish that the Act merely dealt with the former rule excluding contribution, leaving unchanged the position of parties between whom, as already indicated, a right of indemnity existed at common law. Tucker, J., however, referred to subs. (2) which is as follows:—

> "(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity."

The learned judge construed the section as a whole and held that it entitled him to order a schoolmistress to make a contribution amounting to the full damages awarded in an action brought against her and the school managers for assault by way of excessive punishment.

Subsection (2) also raises a question upon which there has been some difference of judicial opinion. In the recent case of *Collins* v. *Hertfordshire County Council and Another* [1947] K.B. 598, Hilbery, J., is reported as saying: "If the wording of that section had stopped at the word 'equitable' and the semicolon had occurred there, I should have thought that what was plainly intended was that a court was to have the fullest discretion to distribute the damages between persons whose several acts had brought about the damage according as the court thought they had degrees of culpability, but the words 'just and equitable' are immediately followed by governing words, i.e., 'having regard to the extent of that person's responsibility for the damage' . . . [Those words] certainly seem to be an indication that the extent of the responsibility for the damage is to be the guiding principle, and, if that is so, it is difficult to conceive how anything other than causal acts can be in any sense acts resulting in the damage, or in other words, responsibility for the damage." Hallett, J., refers to this passage in the still more recent case of *Weaver* v. *Commercial Process Co., Ltd. and Others* (1947), 63 T.L.R. 466. Remarking that it is the three words "for the damage" which no doubt caused Hilbery, J., to come to the view that contribution must be fixed not according to culpability but according to the relative effect of the acts of the two tortfeasors in causing the damage, Hallett, J., expresses himself as fully recognising the difficulty caused by those three words. A consideration of the earlier part of the section and of its scope and drafting as a whole, however, led the learned judge to resolve the difficulty in a sense different from that adopted by Hilbery, J., in *Collins*' case. "The section," says Hallett, J., "refers not merely to joint tortfeasors in the technical sense, but to more than one tortfeasor." In a case where two independent torts have concurred to produce the damage "it would have been inaccurate to speak of apportioning the responsibility for *the* tort. That seems to me to be the probable explanation of the drafting which has given my brother trouble with regard to those three words."

On a previous occasion, in *Daniel* v. *Rickett, Cockerill & Co.* [1938] 2 K.B. 322, Hilbery, J., had paraphrased the subsection is this way: "Exercising a judicial discretion in the matter, I am intended to do that which I think is right between the parties, having regard to what I think, on the true facts of the case, is the fair division of responsibility between them." That was the case which Hallett, J., considered to be the right one for him to follow, preferring it to *Collins*' case.

It may perhaps be respectfully suggested as an addendum to this interesting judicial debate that the significance of the words "having regard to the extent of . . . responsibility for the damage" may be rather that they are restrictive of the expression "just and equitable" in the sense of confining it to matters connected with the responsibility of the contributing tortfeasors, and excluding, for instance, any peculiarity in the position of the party injured, or any considerations tending to excuse one of the tortfeasors on moral or other extraneous grounds.

In another article it is hoped to examine the application of subs. (2) in some reported cases.

Mr. ROBERT BELSEY KEEP, Assistant Solicitor to Walsall Council, has been appointed Deputy Town Clerk of Croydon. He was admitted in 1944.

Mr. EDWARD CRANSTON BARLOW has been appointed Assistant Solicitor to Wallasey Corporation, Cheshire. He was admitted in 1941.

DIVORCE LAW AND PRACTICE

ONUS OF PROOF

(1.) *Where insanity is raised as a defence to cruelty.*

WITH regard to a defence to a charge of cruelty based upon the insanity of the respondent whereby he or she was not legally responsible for the acts of cruelty, which was considered in the last article in this series (*ante*, p. 512), an interesting decision was given in *Brittle* v. *Brittle* [1947] 2 All E.R. 383, which concerned the onus of proving the absence of responsibility in such a case. There a wife sought a dissolution, alleging acts of violence committed by her husband in 1923, to which the defence was set up that he was not legally responsible for his actions at that time so as to make the acts amount in law to cruelty. It appeared that in that year the husband, following upon one attack and preceding another, was put into a mental home where he remained for some months, and that since 1939 he had been in a mental hospital. It was argued on behalf of the wife that once she proved acts which were *prima facie* acts of cruelty the onus of showing that the husband was not responsible for his actions lay on him, and he must discharge that onus in the same way and to the same extent as he would have to do in criminal proceedings, i.e., he must show either that he did not know what he was doing, or that he did not know that what he was doing was wrong, upon the principle applicable to divorce proceedings as laid down in *Astle* v. *Astle* [1939] P. 415, and that if the court were left in doubt whether the husband had the necessary knowledge the wife was entitled to succeed. In his judgment granting a decree, Willmer, J., pointed out that one matter, which in itself was a source of doubt, but which so far as it went was in favour of the wife, was the fact that although acts of violence in 1923 were complained of by the wife, who had not lived with her husband since that date, nobody certified the husband for another sixteen years, from which he could only draw the inference that, in the view of those qualified to judge during that period, he retained at least some measure of responsibility for his actions. He thought that that consideration swayed the balance in favour of the wife. With regard to the argument for the wife that the onus of displacing the *prima facie* case was on the husband, he stated that he did not see any answer to that argument and that, the wife having proved the necessary acts of violence, he thought that the only conclusion to which he could come was that the wife had proved her case of cruelty.

(2) *Where the presence or absence of collusion or connivance is in issue*

It will be remembered that this question arose in two cases recently, one in the Court of Appeal, *Churchman* v. *Churchman* [1945] P. 44; 89 SOL. J. 508, and the other before Denning, J., in *Emanuel* v. *Emanuel* [1946] P. 115. There it was laid down that while in law since the passing of the Matrimonial Causes Act, 1937, the presumption is still against collusion or connivance, this presumption is provisional only: where the circumstances are such as to give rise to suspicion, it is thereby counter-balanced and the legal burden is cast upon the petitioner under s. 178 of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended by s. 4 of this Act, of satisfying the court that no collusion or connivance exists, and if the court is not so satisfied the duty lies upon it under the section to dismiss the petition. (For a fuller discussion of these cases, see 90 SOL. J. 253, 265.)

(3) *Where the King's Proctor shows cause*

Bluff v. *Bluff* (*otherwise Kelly*) [1946] 2 All E.R. 63 concerned the question upon whom lay the onus of proof in a case where the King's Proctor intervened to show cause why a decree *nisi* of nullity, which had been granted to a husband petitioner on the ground of the wilful refusal on the part of the respondent wife to consummate the marriage, should not be made absolute, it being alleged by the King's Proctor that the marriage had in fact been consummated. It was argued for the petitioner that the King's Proctor in so intervening must prove the truth of his plea and that consequently, if the court at the end of the hearing were left in doubt, the petitioner was left in possession of his decree; while it was argued on behalf of the King's Proctor that in such circumstances the petition failed. It was held by Willmer, J., that the intervention by the King's Proctor alleging that the assertion which was the foundation of the decree obtained by the petitioner was false went to the same subject as that which formed the basis of the petitioner's prayer for a decree, and that in such a case the King's Proctor was not bound to prove affirmatively that the marriage had been consummated, that the whole matter was reopened and that if the petitioner failed to satisfy the court that the marriage had not been consummated because of the wilful refusal of the wife the petition should be dismissed. Acting upon this principle, he dismissed the petition and rescinded the decree. It appears, however, that the case of *T.* v. *T.* (*otherwise T.*), *the King's Proctor showing cause* (1908), 24 T.L.R. 580, in which this very point arose, was not referred to in argument, and it is submitted with respect that had it been it would have been held decisive of the matter and the decision would have gone the other way as regards the onus of proof. In that case the King's Proctor had intervened to show cause why a decree *nisi* of nullity, which had been granted to a husband petitioner upon the ground of incapacity on the part of the wife respondent to consummate the marriage, should not be made absolute upon the ground that the marriage had been consummated. It was admitted by counsel for the King's Proctor in his submission to the court that material facts had been withheld from the court, namely, that the wife was *apta viro* and the marriage had been consummated, that the onus of proof was on the King's Proctor to show that those material facts had been withheld, and he submitted that he had done so. In his judgment rescinding the decree Bargrave Deane, J., says: "If all the evidence now before the court had been before me at the original trial, I should certainly have dismissed the petition on the ground that the husband had not established his case. My duty is to see whether or not the King's Proctor has now made out his case, and in my opinion he has done so." From this it would appear that the learned judge took the view that the onus was on the King's Proctor, and that on the facts he had discharged it.

It may be noted, however, that Willmer, J., considered in *Bluff's* case that, had the intervention been to allege adultery on the part of the petitioner which had not been disclosed at the hearing, in such a case the onus would be on the King's Proctor to establish affirmatively that such adultery had taken place and that, if he failed in this respect, the petitioner would be left in possession of the decree which he had already obtained.

In conclusion, as regards the importance of the question of onus, it may be pointed out that, as was stated in the judgment in *Churchman's* case, "the incidence of the burden of proof as a determining factor of the whole case is only of importance if the tribunal finds the evidence pro and con so evenly balanced that it can come to no definite conclusion. Then the onus will determine the matter. But if the tribunal, after hearing and weighing the evidence, comes to a determinate conclusion, the onus has nothing to do with it and need not be further considered . . ." (*per* Lord Merriman, P., at p. 52).

A public lecture on "The Spirit of English Law" will be given at King's College, London, by Prof. R. H. Graveson, LL.M., S.J.D., Ph.D., Professor of Law, on Monday, 13th October, at 5.30 p.m. Admission will be free, without ticket.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Friday, 24th October, at 10 a.m.

COMPANY LAW AND PRACTICE

INTERPRETATION

FOR a considerable time now the whole field of company law has been contained in one Act, and consequently the task, which will arise when an order is made bringing any of the provisions of the 1947 Act into force, of reading two or more Acts together to ascertain the law will be for everyone an unfamiliar one and for some quite new.

In some respects little difficulty is created, as, for example, where the new Act merely says a particular subsection of the old Act shall go and a new subsection take its place, but the more general and the miscellaneous provisions of the new Act will be apt to cause rather more difficulty. For example, in a number of places in the new Act there is a provision that an expression to be found in the old Act is to bear a particular construction. Those amendments will have to be borne in mind, and it will also take most people some time to master the combined effect of the two interpretation sections.

It is not at first sight apparent what the effect is of the Eighth Schedule to the new Act. That Schedule contains a table of certain provisions of the old Act with a statement as to the subject-matter dealt with by those provisions, and is headed " Enactments of Principal Act Applied."

The reference in the margin is to s. 122, which is the interpretation section, and subs. (7) of that section provides that in the provisions specified in this Schedule references to the old Act are to include references to the new Act except so far as the context excludes such a construction.

The simplest way to see how this works is to take a concrete example. The first provision specified in the Schedule is s. 1 (1) of the old Act, which it will be remembered says that " Any seven or more persons . . . associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act . . . form an incorporated company . . ."

In other words that subsection is to be treated as amended by the insertion of the words " and of the Companies Act, 1947 " after the words " of this Act." Similarly the next provision mentioned in the Schedule is s. 15 (1), which says that the certificate of incorporation is to be conclusive evidence that all the requirements of the old Act have been complied with, and consequently this provision is also to be treated in the same way.

On taking these concrete examples, it is perfectly clear what it is intended to effect, but it is not at first sight plain why the process carried out by the subsection and the Schedule is an application of the provisions of the old Act to those of the new. It would be easier to understand if the Schedule was described as "references in the old Act to requirements of that Act which are to be construed as including also the requirements of the new Act", though it would be considerably longer.

An example of the kind of hunting about that may go on in the two Acts without actually getting anywhere is, perhaps, furnished by a consideration of s. 30. The first six subsections of that section contain the provisions about directors retiring on attaining an age limit. Subsection (7) provides : " In the case of a company first registered under the principal Act after the beginning of the year nineteen hundred and forty-seven, this section shall have effect subject to the provisions of the company's articles ; and in the case of a company first so registered before the beginning of that year " certain other provisions are to have effect.

This is the only provision making the provisions of the section subject to a company's articles, and it will be noticed that it only applies in the case of a company first registered under the principal Act. It seems incredible that anyone should have intended to draw a distinction between companies registered under the Companies Act, 1929, and companies registered under earlier Acts, and therefore it is, perhaps, as well to consider the various sections which might have some bearing on this point.

To find the definition of such a company we have to go via the interpretation section of the new Act to the interpretation section of the old Act, where we find " ' Company ' means a company formed and registered under this Act or an existing company," and that an existing company means *inter alia* a company formed under the earlier Companies Acts. This clearly suggests that there is a distinction between a company registered under the 1929 Act and one registered under earlier Acts and it is difficult to avoid this conclusion.

In s. 316 of the old Act, however, it is provided that in the application of that Act to existing companies, i.e., those registered under earlier Acts, it is to apply as if the company had been registered under the 1929 Act. In other words, although the 1929 Act draws a distinction between those registered under it and those registered under earlier ones, it is to apply to both in the same way.

It remains to be seen if a similar provision can be found in the 1947 Act which would have the effect of overriding the apparent distinction drawn in s. 30 (7). Section 107 of the new Act provides that Pt. VIII of the old Act (in which s. 316 occurs) is to apply for the purposes of the application of the new Act to companies registered under Acts earlier than the Companies Act, 1929, as they apply for the application of the provisions of that Act to those companies, or, in other words the Companies Act, 1947, is to apply to pre-1929 Act companies as it applies to 1929 Act companies. It must, however, at least remain doubtful whether this general provision has the effect of making the expression " Company first registered under the principal Act " equivalent to companies registered under any Companies Act.

No doubt other similar problems will crop up, but these merely mechanical difficulties, it is to be hoped, will be ironed out by a consolidating Act.

A CONVEYANCER'S DIARY

PRICE CONTROL AND HOUSES

THE Building Materials and Housing Act, 1945, provides machinery for fixing the maximum price at which houses to which the Act applies may be sold and lays down penalties for any infringement of its provisions in this respect. The scope of the Act is, of course, small ; it applies only to houses built under a building licence which has been granted subject to a condition limiting the permitted price of the house (s. 7 (1)), but within these limits the Act is a valuable protection against " black market " operations in new houses of the smaller type, and it is therefore disquieting that practice should have revealed certain flaws in the Act which materially reduce the protection that it should confer on purchasers of such houses. The deficiencies of the Act from the purchaser's point of view may be most conveniently examined by considering first of all its material sections.

Section 7, so far as relevant, provides as follows :—

" (1) Where a house has been constructed under the authority of a licence granted for the purposes of a Defence Regulation (hereinafter referred to as ' a building licence ') and the licence, whether granted before or after the passing of this Act, has been granted subject to any condition limiting the price for which the house may be sold . . . any person who, during the period of four years beginning with the [20th December, 1945] sells or offers to sell the house for a greater price than the price so limited (hereinafter referred to as ' the permitted price ') . . . shall be liable on summary conviction to a fine not exceeding the aggregate of—

(*a*) such amount as will in the opinion of the court secure that he derives no benefit from the offence ; and

(*b*) the further amount of £100;

or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

(7) Where proceedings are taken for an offence against this section, the court shall have the following powers, that is to say:—

(*a*) where any fine imposed by the court includes any such amount as is mentioned in paragraph (*a*) of subsection (1) of this section, the court may, if having regard to the circumstances the court thinks it just so to do, direct that the whole or any part of that amount, when paid or recovered, shall be paid over to any person who is shown to the court to have given, or to be liable to give, a consideration in excess of the permitted price . . . in respect of the house in question;

(*c*) where any person is convicted of the offence of selling a house at a price in excess of the permitted price, the court may, if any sums remain payable on account of the price at the time of the conviction, make such modification of the terms and conditions of the sale as in the opinion of the court are necessary for the purpose of securing, so far as practicable, that the price does not exceed the permitted price.

(8) Subject to the provisions of the last preceding subsection, the commission of an offence under this section shall not affect the title to any property or the operation of any contract."

The difficulty arises in relation to this last subsection. A enters into a contract with a builder, B, to purchase a house to which the Act applies. The house may not be completed at the time of the contract. In ignorance, A agrees to pay a price in excess of the permitted price. (It is true that under s. 8 of the Act it is the duty of the local authority within whose area the house is situated to register any condition as to price which may be imposed by the building licence as a local land charge, but experience shows that this is not always done, at any rate before the house is completed; and in any case an eager purchaser may well neglect to search the register until he has signed the contract.) A subsequently discovers that he is entitled to the protection afforded by the Act and informs B that he will not pay more than the permitted price. B thereupon repudiates the contract. What is A to do? He cannot bring an action against B for specific performance, as the only contract which the court can order to be specifically performed is the contract to purchase at the price originally agreed between the parties—i.e., at something more than the permitted price—s. 7 (8). The only court which has power to vary the contract by substituting the permitted for the agreed price is a court of summary jurisdiction which has convicted a vendor of an offence under the Act. Since, therefore, the remedy by way of an action for specific performance is ineffectual, A will probably inform the local authority, on whom s. 8 (2) primarily imposes the duty of securing that the provisions of the Act are observed. But the local authority may decide, after investigation, that they will not institute proceedings against the vendor—this has, in fact, happened in one case which has come to my knowledge. A then has to decide whether or not to start a private prosecution against B in order to avail himself of the provisions of s. 7 (7) (*c*) of the Act.

In spite of the terms of s. 8 (2) of the Act, which provides that "it shall be the duty of every local authority to take such measures as they think necessary for securing the enforcement . . . of the provisions of this Act relating to the permitted price," I think it is open to any person to bring a private prosecution under s. 7, but I believe it is rare for justices in summary proceedings to avail themselves of the power they possess of ordering a defendant to pay the prosecutor's costs; and A, even if he is successful in his prosecution and in his application to have the contract varied by the substitution of the permitted for the agreed price, may well find himself out of pocket on this account. But there is a much more serious difficulty which may completely deprive A of any remedy. The Act contains no provision for limiting the period within which a prosecution may be instituted and it follows that the period is the usual one of six months laid down by the Summary Jurisdiction Act, 1848. In the present conditions of the building trade it may easily take more than six months to build a house, and yet in many cases it is only when the house is nearly built and ready for occupation, and the time for completion of the sale approaches, that the purchaser seeks legal advice. If six months or more have by then elapsed since he entered into a contract of sale with the vendor the purchaser has no redress under the Act, for any offence which the vendor may have committed would have been committed when he originally contracted to sell the house at a price in excess of the permitted price. Prosecution and the consequential relief provided for by s. 7 (7) (*c*) are then impossible, and the purchaser is left with a contract that he can certainly enforce, but only at the cost of acceding to what, in the broad sense of the word, is an illegal term. This paradoxical situation is the result of an attempt—doubtless inspired by the best of intentions—to provide the simplest and cheapest remedy for any person who suffers in consequence of an offence committed under the Act. There is no reason why any court to which a matter concerning the Act is referred should not have powers of variation similar to those conferred on a court of summary jurisdiction, but it is unlikely that a measure of so temporary a character as this Act will be amended. It is, therefore, of the first importance that no time should be wasted in taking proceedings if it is desired to apply for a modification of the contract price in any sale to which the Act applies.

* * * * *

The decision in *Re Power* [1947] W.N. 211; 91 SOL. J. 409, was the subject of comment in this "Diary" on the 23rd August. The facts in that case were, very shortly, as follows: the trustees of a will which contained an investment clause drawn in the widest terms applied to the court on a construction summons for a decision on the question whether the clause authorised them to purchase a house, not for the purpose of investment in the sense of obtaining an income from the purchase, but for the occupation of the tenant for life under the will. The decision was in the negative. As a footnote to the review of the case the question was posed whether the result would not perhaps have been different had the matter been brought before the court not on a construction summons, but on an application under s. 57 of the Trustee Act, 1925. A gentleman who was engaged in the case has since then kindly sent me a transcript of the judgment from which it appears that the summons did in fact include an application under s. 57. This application was considered immediately by the learned judge, and granted on certain terms as to price, etc. It is at least satisfactory to learn that trustees and beneficiaries who may find themselves in a similar position to those in *Re Power* have thus a precedent on which they may rely if they are minded to make a similar application, but I still consider the decision in that case on the construction point, with all respect, to be unduly restrictive and inconvenient. Trustees to whom a testator or settlor is willing to confide so wide a discretion as regards investment should not, in my view, be required to go to the expense of an application to the court in cases such as *Re Power*.

The Croydon (London South) Liabilities Adjustment Office was closed on the 30th September, 1947, the remaining business being transferred to the London (Central) Liabilities Adjustment Office.

Members of the Suffolk and North Essex Law Society met at Ipswich to pay tribute to Mr. S. G. Cox, of Messrs. Birkett, Ridley and Cox, Ipswich, on his completion of twenty-one years as honorary secretary to the Society. Mr. W. Rowley Elliston, deputising for His Hon. Judge Alfred Hildesley, K.C., who was unable to attend owing to illness, presented Mr. Cox with a gold wristlet watch and an inscribed silver cigarette box on behalf of the members of the Society.

LANDLORD AND TENANT NOTEBOOK

PARTNERSHIP AND RENEWAL OF LEASES—II

THE facts of *Langton* v. *Henson* (1905), 92 L.T. 805, mentioned at the conclusion of last week's "Notebook," a decision which demonstrated that an alleged conflict between two other authorities was purely imaginary, were as follows. In 1893 the plaintiffs' predecessor in title (they were his executors) granted a twenty-one-year lease of city premises to an individual, who covenanted that he and his assigns would not assign the term without the landlord's consent. For a time, the term changed hands yearly; in 1894 it was assigned to another person, with the requisite consent; in 1895 that person assigned, again with consent, to two persons carrying on business in partnership. But in 1896 the partnership was dissolved, and one of the partners, the defendant in the subsequent action, assigned his undivided share of and in the premises contained in the lease to the other. For this no consent was sought. In 1903, when the assignor in question may well have forgotten all about it, the landlord had occasion to sue the assignee for rent; and when it appeared that there was no prospect of enforcing the judgment obtained, his executors brought the action for damages for breach of covenant not to assign without consent against the assignor.

The plaintiffs relied on *Varley* v. *Coppard* (1872), L.R. 7 C.P. 505, the defendant on *Bristol Corporation* v. *Westcott* (1879), 12 Ch. D. 461 (C.A.), both of which were briefly discussed in my last article. In the one, the grant was to an individual, who had assigned to partners with consent, one of whom had assigned to the other without consent, and this was held to constitute a breach, so that the facts were on all fours with those before the court; but in the other it had been decided that dissolution of partnership between joint tenants, who were the grantees of a lease, plus an arrangement which left one of them to carry on the business, did not infringe a covenant not to assign, underlet or part with the possession of the premises to any person or persons.

There are a number of ways in which the two authorities might be distinguished; and the vital question was, which distinction would make a difference. In the one case the letting had been to an individual, in the other to two persons jointly and severally responsible; but in neither had a stranger been made a party to the lease, and it was urged by the defendant that the *Bristol* decision, construing the covenant as meaning that possession was not to be given to anyone who had not been admitted and approved, was inconsistent with the earlier authority. Bucknill, J., however, pointed to another distinction, which he considered the vital one: *Varley* v. *Coppard* concerned breach of covenant not to *assign*, *Bristol Corporation* v. *Westcott* breach of covenant not to *part with possession*. An assignment, the learned judge pointed out, destroyed privity and affected the estate. True, in the *Bristol* case privity of *contract* would have continued after assignment as the partners were the original grantees; but privity of estate can have its value.

In the face of this, I do not think that any doubt should be entertained about the authority of *Finch* v. *Underwood* (1876), 2 Ch. D. 310 (C.A.), decided after *Varley* v. *Coppard* but before *Bristol Corporation* v. *Westcott*, and in which it was held that one of two partners was not entitled to the benefit of a covenant to grant a new lease. But, as pointed out last week, the fact that the partners were original grantees carried some weight in the circumstances, as the reasoning of the judgments largely proceeds on the lines that the landlord was to have two tenants jointly liable to perform the obligations of the lease. The authority of the decision is not, I submit, extended by *Langton* v. *Henson* so as to warrant the proposition that if a lease with a covenant to renew be granted to an individual, and subsequently assigned to partners, both must join in any application for a new lease. There would be no question of any privity being destroyed, and either partner could claim to hold the estate *per my et per tout*.

The statutory right to a renewal (given a number of circumstances) in the case of accrued goodwill, conferred by s. 5 of the Landlord and Tenant Act, 1927, is, of course, on a different footing; by s. 25 (1) "tenant" means any person entitled in possession under any contract of tenancy, whether the interest of such tenant was acquired by the original contract, *assignment*, operation of law or otherwise; and the basis of the claim is set out in s. 4 (1) as "that by reason of the carrying on by him *or his predecessors in title* at the premises of a trade or business for a period of not less than five years goodwill has become attached to the premises," etc.

TO-DAY AND YESTERDAY

LOOKING BACK

IN October, 1746, the trial of several of the men who had served in Prince Charlie's army during his rising took place at York. On 6th October George Hamilton, who had held a captain's commission, appeared at the bar. His counsel explained that he "would not give the court the trouble of hearing any evidence to disprove the charge but, as reports had gone about the Kingdom to his prejudice, representing him as being guilty of particular acts of cruelty and barbarity to the King's subjects, he had put himself upon his trial in order to remove those aspersions." A soldier, taken prisoner by the insurgents, swore that Hamilton had tried to make him join them, at the sword point. A guide, pressed into their service, swore that he had threatened to hang him if he led them wrong. The verdict was guilty. John Balantine, a piper, who was tried next, was able to show that he was forced into the rebels' service. On his acquittal he threw his bonnet to the roof of the court shouting: "My lords and gentlemen, I thank you! Not guilty! Not guilty! Not guilty! God bless King George for ever! I'll serve him all the days of my life!" He then rushed into the castle yard with his fetters on, took a handful of gutter water and drank the King's health. Next day the trials proceeded. Two Frenchmen pleaded that, as their country was at war with England, they could not be guilty of treason. One was acquitted but the other, who had come over as the servant of a Dutch officer, was held to have acquired a local allegiance by living under the King's protection and was convicted. The trials ended that day and seventy convicted insurgents were condemned to death.

THE COURTS IN BRUSSELS

THE Long Vacation ends and those who were able to slip off beyond the seas before the authorities screwed down the lid on us have given their minds a last broadening stretch with £35 (or maybe £75) worth of foreign travel. In the course of a rather belated personal discovery of the beauties of Belgium, the writer paid a detailed visit to the Law Courts in Brussels. The vast bulk of this cyclopean structure is all the more surprising in so charming a "pocket" capital as, under the decentralised system of Belgium justice, each of the provinces has its own High Court. Erected by Poelaert between 1866 and 1883, the building occupies a dominating position on the site of fifty-two streets and alleys and for sheer bulk there is nothing in England like it except the very largest railway stations. The guide book observes that: "Ce monument gigantesque qui fait l'admiration des étrangers rapelle les splendeurs de l'Assyrie et la Tour de Babel." A friend at the Belgian Bar suggested that the latter parallel might perhaps refer to the performances of some of his colleagues. One of the last acts of the retreating Germans was to set fire to the great central dome, some say because it housed radiolocation apparatus, others in order to destroy incriminating documents. The dome is still a skeleton and extensive repairs are in progress in the great central hall below.

SOME CONTRASTS

FOR finding one's way about, the Palace of Justice is quite as confusing as the Law Courts in the Strand. In the latter the difficulty lies in threading a way through "ye olde style Gothick nookies"; in the former the enormous staircases, galleries, corridors

and balconies produce a sensation of being lost in too vast a space. Perhaps the contrast is symbolic of the difference between case and statute law on the one hand and planned codification unconfined by precedent on the other. The respective difficulties are neither greater nor less—only different. The High Court embraces all jurisdictions—civil, criminal and appellate—and, of course, there is the dual procedure which, in a running-down case, for instance, marries a prosecution with a claim for damages. The court rooms are spacious and panelled, with a semi-circular dais for the judges. On their right at the far end sits the Crown's representative, on their left the registrar. Below are counsels' benches and behind them ample standing room for the public, all on the same level. There is no witness-box, for evidence is taken in chambers, save as regards the interrogation of accused persons by the presiding judge. Nor is there any dock, for prisoners and litigants alike sit in front of their counsel as in the English High Court. Counsel wear a black cassock-like gown with three ermine-tipped tails hanging back from the left shoulder. Their pleated bands (to use an English term) are longer and more elaborate than ours. The senior men still give completeness to the costume with a tall round cap. The younger men have tended to discard it and to wear light-coloured suits beneath their robes, with a corresponding loss of impressiveness. The judges in general wear black robes, though they have scarlet for particular occasions. Proceedings may be in Flemish or French. Counsel need not be bilingual but judges must be. The *avocat*, the *avoué* and the *notaire* do not, of course, stand in at all the same relationship as counsel and solicitors in England.

REVIEW

Income Tax under Schedule E. Second Edition. By JAMES S. HEATON, Incorporated Accountant (Hons.). 1947. London: Jordan & Sons, Ltd. 15s. net.

This is a very useful book and particularly so because of the clear exposition of the system of assessing and collecting income tax under Sched. E, known as P.A.Y.E., that it contains. The statutes and regulations that govern the system are reproduced in the Appendix. The Appendix also contains notes on P.A.Y.E. as applied to Church of England clergy. Summaries of some of the recent double taxation agreements are also included. The subject is adequately covered and the explanations of difficult points are clear. There are chapters on Offices and Employment Abroad, Pensions, Emoluments covered by Sched. E, Lump-Sum Payments, Expenses, Superannuation, Assessments and Appeals, Returns by Employers and Employees, Deduction of Tax, Transitional Provisions, Tax-free Remuneration and other important subjects.

BOOKS RECEIVED

The Law of Support in Relation to Minerals. By F. A. ENEVER, M.C., M.A., LL.D., of Gray's Inn, Barrister-at-Law. 1947. pp. xiv and (with Index) 162. London: The Solicitors' Law Stationery Society, Ltd. 25s. net.

Law Reform Now. By a Committee of The Haldane Society. 1947. pp. 32. London: Victor Gollancz, Ltd. 9d. net.

Burke's Loose-Leaf War Legislation. Edited by H. PARRISH, Barrister-at-Law. 1946–47 Vol., Pts. 13 and 14. London: Hamish Hamilton (Law Books), Ltd.

Guide to Income Tax Practice. Sixteenth Edition. By HERBERT EDWARDS, M.A. (Lond.), formerly a Senior Inspector of Taxes, and ALAN M. EDWARDS, B.Com., F.C.A. 1947. pp. lxxxiv and (with Index) 853. London: Gee & Co. (Publishers), Ltd. 50s. net.

British Nationality Law and Practice. By J. MERVYN JONES, M.A., LL.B., of Gray's Inn, Barrister-at-Law. With a Foreword by W. E. BECKETT, C.M.G., Legal Adviser to the Foreign Office. 1947. pp. xxiv and (with Index) 452. London: Oxford University Press. 30s. net.

The Stock Exchange Official Year-Book, 1947. Editor-in-Chief: Sir HEWITT SKINNER, Bt. 1947. pp. (with Index) ccxxii and 3,482. London: Thomas Skinner & Co. (Publishers), Ltd. 100s. net.

Register of Defunct and other Companies, 1947. Editor-in-Chief: Sir HEWITT SKINNER, Bt. 1947. pp. iv and 412. London: Thomas Skinner & Co. (Publishers), Ltd. 20s. net.

The Federal Administrative Procedure Act and the Administrative Agencies. Proceedings of an Institute conducted by the New York University School of Law on 1st–8th February, 1947. Vol. VII. Edited by GEORGE WARREN. 1947. pp. viii and (with Index) 630. New York: New York University School of Law.

Ringwood's Principles of Bankruptcy. Eighteenth Edition. By HERBERT JACOBS, of the Inner Temple, Barrister-at-Law. 1947. pp. xliv, 272 and (Index) 48. London: Sweet and Maxwell, Ltd. 25s. net.

Motor Claims Cases. Supplement to First Edition. By LEONARD BINGHAM, Solicitor of the Supreme Court. 1947. pp. x and 68. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

Working Together. Vol. 1, No. 4. 1947. Hamilton, New Zealand: The Employee Partnership Institute.

THE INTERNATIONAL BAR ASSOCIATION

The International Bar Association has recently been established largely through the efforts of the American Bar Association. Its objects are primarily to promote the principles and aims of the United Nations Organisation in their legal aspects and to form a link with that organisation, to foster international uniformity in appropriate fields of law and to strengthen friendly relations among the members of the legal profession throughout the world.

It is proposed to hold international conferences annually in one of the member countries.

Membership of the International Bar Association is limited to national organisations, and the General Council of the Bar and The Law Society have become members. The Chairman of the General Council of the Bar and the President of The Law Society have been nominated as Vice-Presidents of the Association.

Under art. 4 of the constitution provision is also made for the election of Patrons of the Association. Patrons are entitled to attend all the international conferences of the Association and the sessions of the House of Deputies which controls the Association. Patrons are also entitled to participate in the conferences on specific legal subjects. Each Patron of the Association shall contribute not less than twenty-five U.S. dollars annually, such subscriptions to be payable in advance on the 1st January yearly, and to be computed on a quarterly basis for Patrons elected during the year.

The Bank of England has signified its assent to the purchase of U.S. dollars for this purpose.

Any barrister or solicitor wishing to become a Patron should submit (to the Bar Council in the case of barristers, to The Law Society in the case of solicitors) his full names, address and length of practice, together with details of membership of any other legal organisation to which he may belong and the amount of subscriptions offered by him. Under the bye-laws of the Association nominations of Patrons are in the first instance to be made through these channels.

The General Council of the Bar and the Council of The Law Society believe that the importance of this new Association, the interesting matters which will come before it and the opportunity thereby afforded for international social contacts will make a wide appeal to the profession in England.

Any further inquiries concerning the Association should be addressed either to the Secretary of the Bar Council (5 Stone Buildings, Lincoln's Inn, W.C.2) or the Secretary of The Law Society (Chancery Lane, W.C.2).

OBITUARY

Mr. J. P. L. MURPHY

The death has occurred at Tarbes Hospital, near Lourdes, of Mr. J. P. Lonan Murphy, a Dublin solicitor. He was forty years of age, and was admitted a solicitor in 1928. Mr. Murphy was a well-known social worker. Several members of the Eire Judiciary and Cabinet attended the funeral.

Mr. T. J. RANDELL

Mr. Thomas Jones Randell, solicitor, of Messrs. Randell, Saunders and Randell, solicitors, of Swansea, died on 30th September. He was admitted in 1906.

Wills and Bequests

Mr. R. B. Blaker, solicitor, of Nottingham, left £1,864.

Mr. R. C. Carter, barrister-at-law, of Stratford-on-Avon, left £55,177.

Mr. H. St. G. Syms, retired solicitor, of Shamley Green, Surrey, left £62,109.

NOTES OF CASES

COURT OF APPEAL

Beard *v.* **Porter**

Tucker, Somervell and Evershed, L.JJ. 22nd July, 1947

Vendor and purchaser—Breach of contract—Measure of damages—Sale of house completed—Vendor's subsequent failure to give vacant possession—Second house bought by purchaser—Solicitor's costs and stamp duty on second purchase as part of damages.

Appeal from a decision of Mr. Commissioner Streatfeild, given at Winchester Assizes.

By a written contract dated the 30th January, 1945, the defendant agreed to sell the plaintiff a certain house within the Rent Restrictions Acts. The vendor knew that it was essential to the purchaser to have vacant possession of the house as his home. The property was sold subject to an existing tenancy, but the purchaser was to be given vacant possession on the 1st August, 1945. The purchase was completed on the 14th March, 1945, when the property was duly conveyed to the purchaser. The tenant, however, eventually refused to quit, and remained in the house as a statutory tenant. The purchaser accordingly brought this action against the vendor claiming damages for breach of the contract to give vacant possession on the 1st August. The commissioner gave judgment for the purchaser for £1,078 13s. The vendor, on appeal, conceded liability, but challenged the finding as to damages. The £1,078 13s. was made up of (1) £980, the difference in value between the purchase price of £2,500 and the value of the house subject to the protected tenancy, namely, £1,520; (2) £52 18s., solicitor's charges incurred by the purchaser in buying a second house; (3) £30, *ad valorem* duty in respect of the second house; and (4) £15 15s., for lodgings. (*Cur. adv. vult.*)

EVERSHED, L.J., asked to read his judgment first, said that on the main item of £980 the vendor must fail. As for the claims in respect of costs and duty, the purchaser had obtained what he had contracted to buy, and had received compensation for the loss in value of the thing purchased by reason of the vendor's failure to give vacant possession. The purchaser had presumably paid in respect of his purchase a larger sum to his solicitor and a larger amount of *ad valorem* duty than he would have been called upon to pay had the purchase price originally been £1,520 instead of £2,500; but no claim was made in respect of that overpayment. The second purchase seemed to be wholly distinct from the first. Expenses incurred by the purchaser in respect of his second purchase could not, in his (his lordship's) view, constitute loss or damage flowing from the vendor's breach of the first contract. If they could, they were too remote. On a purchase of land the scale charges and stamp duty were part of the cost of purchase. The price paid by the purchaser for the first house, as now reduced, was £1,520 plus the legal costs and duty. For that he had obtained what, in the circumstances, he had bargained to obtain, and at a proper price. Similarly, on the second purchase, he paid the purchase price plus costs and stamp duty, and, so far as the evidence went, had had value for his money. If he had not, that was not a matter for which the defendant could be held responsible. He (his lordship) saw no reason for treating part of what he had to pay, namely, his solicitor's charges and stamp duty, as constituting damages properly flowing from the vendor's breach of one of the terms of the contract which had since been completed by the conveyance of the subject-matter of the contract, in effect at a reduced price.

TUCKER, L.J., said that he agreed with Evershed, L.J., except in regard to solicitor's costs and stamp duty incurred in respect of the purchase of the second house. Those items appeared to him to result directly from the vendor's breach of contract. The purchaser must be presumed to have received full value for the money paid for the second house, but the stamp duty and legal costs were not part of the purchase price. They were, no doubt, items necessarily payable on the purchase and could thus be described as part of the cost of the purchase, but they were outgoings necessitated by the vendor's breach for which the purchaser had received no countervailing benefit. They were sums paid away which were not reflected in the value of the house which he had first purchased. The appeal failed.

SOMERVELL, L.J., gave judgment agreeing with Tucker, L.J.

COUNSEL: *Raymond Stock; Conrad Oldham.*

SOLICITORS: *W. F. Gillham*, for *G. T. Richards*, Bournemouth; *Tarry, Sherlock & King*, for *A. V. Clappen & Weaver*, Bournemouth.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re **Armstrong Whitworth Securities Co., Ltd.**

Jenkins, J. 30th July, 1947

Company—Voluntary winding up—Notices to creditors—Company previously its own insurer against workmen's accident claims—Distribution of bulk of assets to shareholders—Receipt of claims from former workmen in respect of renewed disabilities—Companies (Winding-up) Rules, 1929, r. 104 (1), (2).

Adjourned summons.

The company carried on up to 1928 an extensive engineering, armament and shipbuilding business, employing an average of 30,000 employees. In that year its works were disposed of to other companies in exchange for shares, which were also disposed of between 1933 and 1937. The company went into voluntary liquidation in 1943, and A.A., the liquidator, published the prescribed advertisement in newspapers under r. 104 of the Companies (Winding-up) Rules, 1929, calling on creditors to notify their claims on or before 1st November, 1943. Until 1933 the company acted as its own insurer in respect of workmen's compensation claims. Some 50,000 accidents had occurred while the company was engaged in active operations, records of which had been kept since 1918. In 1938 these records were examined, and a policy was taken out to cover 141 cases in which there was a reasonable prospect of recurrence of the injury. On the liquidation the assets got in amounted to £822,000, of which £798,000 was declared to be returnable to shareholders in dividends, of which £11,700 remained in the liquidator's hands in March, 1946, the delay in distribution being caused initially by the difficulty in tracing a number of shareholders, and subsequently by the lodging of the claims which occasioned the present proceedings. The final meeting of the company under s. 236 of the Companies Act, 1929, was held on 31st October, 1945, but the date of dissolution had been postponed by successive orders of the court. Between the months of February and July, 1946, four claims for compensation were received from former workmen not included in the policy who had previously suffered injury and received compensation during the period when the company was operating its works. The original liquidator died on 11th March, 1946, and A.T.H. was appointed liquidator, who took out this application for directions as to the disposal of the balance of £15,000 remaining in hand, consisting of the sum indicated above which had not been distributed to certain shareholders, and, in addition, the sum of £3,500 which had been voted as remuneration to the former liquidator. The Companies (Winding-up) Rules, 1929, provide by r. 104 (1) that a liquidator shall "fix a certain day, which shall not be less than fourteen days from the date of the notice on or before which the creditors of the company are to prove their debts or claims, and to establish any title which they may have to priority under s. 264 of the Act, or to be excluded from the benefit of any distribution made before such debts are proved or, as the case may be, from objecting to such distribution." Paragraph (2) of r. 104 provides that the liquidator shall, in a voluntary winding up, "give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient . . . and . . . to the last known address or place of abode of each person who to the knowledge of the liquidator claims to be a creditor or preferential creditor of the company and whose claim has not been admitted." It was contended on behalf of the representatives of the deceased liquidator and of the unpaid shareholders that the four claimants were not persons who claimed to be creditors to the knowledge of the liquidator, and that their claims had been defeated by the issue of the prescribed advertisement.

JENKINS, J., said that although the claimants might not have been able to establish an accrued liability at the commencement of the winding up, they had contingent claims for which provision should be made before any distribution was made to shareholders, who were not entitled to anything until all debts had been paid. There was no authority for the proposition that the claim of a creditor could be defeated by a partial distribution to shareholders, after the issue of advertisements in accordance with r. 104. Even if the liquidator had been entitled to make distributions to shareholders after mere issue of the newspaper advertisements, the claimants were entitled to be compensated out of the balance of the assets. But the liquidator had not properly fulfilled his duty; he had in his possession numerous records of accidents, and in every case in which a declaration of liability had been filed, or weekly compensation had previously been paid, he must be taken to have known that he had the particulars of a number of potential claimants whose claims might be revived. Under these circumstances it was his duty to take

all reasonable steps to ascertain whether those concerned did make any such claim; he should have sent a notice to each potential claimant at his last known address, as recorded in the company's records. The newspaper advertisements could only be relied on as sufficient in the cases of which no records had been kept, and in the cases where the individual notices were undelivered owing to changes of address (*Pulsford* v. *Devenish* [1903] 2 Ch. 625; *James Smith & Sons (Norwood), Ltd.* v. *Goodman* [1936] Ch. 216). The present liquidator should have sent an appropriate notice to every potential claimant whose case was recorded. The question whether the unpaid shareholders were entitled to claim against the sum retained to provide the deceased liquidator's remuneration, or against his estate, in respect of any loss arising to them as compared with the shareholders already paid, did not arise in the present proceedings.

COUNSEL: *Strangman* and *G. R. F. Morris; Ungoed-Thomas*, K.C.; *D. S. Chetwood; P. R. Pain.*

SOLICITORS: *Allen & Overy; Peacock & Goddard; W. Wallace Harden; W. H. Thompson.*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

Capper *v.* Williams

Lord Goddard, C.J., Atkinson and Oliver, JJ.
2nd May, 1947

Town and country planning—Conditional permission to use land in certain way—Non-observance of condition—Condition not an order prohibiting use—No offence—Town and Country Planning (Interim Development) Act, 1943 (6 & 7 *Geo.* 6, *c.* 29), *s.* 5 (5).

Case stated by Chester Justices.

An interim development authority gave the appellant, a builder, notice of their intention to prohibit his use of his premises as a builder's yard, where a gas engine was worked and concrete slabs were manufactured, because such use of them was contrary to the scheme whereby the area in question was zoned for residential purposes. The authority, on the builder's application, gave him in writing a "limited permission" to continue using the land as a builder's store for the time being on condition that no work of any kind was done there. Notwithstanding that condition, the owner thereafter continued to manufacture concrete slabs on the land, whereupon he was charged with contravening s. 5 (5) of the Town and Country Planning (Interim Development) Act, 1943, by using the land in a manner prohibited by the limited permission. The justices convicted him, and he appealed. By s. 5 of the Act of 1943, "If while . . . a scheme under the principal Act is in force with respect to any area, any development of land within that area is carried out . . . otherwise than in accordance with the . . . interim development order . . . the interim development authority may . . . (*b*) where the development consists of any use of the land or any building thereon, by order prohibit that use . . ."

LORD GODDARD, C.J., said that under that section a person who wanted to carry out work which was not in accordance with the terms of the interim order might ask for permission to do it, and that the development authority might give him a permission, to which they might attach any conditions they chose. If, after they had given the permission, that person did not obey the conditions, the Act seemed to contemplate a second order prohibiting that development. If any man deserved to be prosecuted, it was this builder, but the difficulty was that unfortunately the proper procedure had not been adopted. An order ought first to have been made against him. The summons itself indicated the difficulty in which the authority were by its reference to "a manner prohibited by a permission." He (his lordship) was far from saying that the authority might not, when they granted the permission, have included on the same piece of paper an order forbidding the builder to use the land in the manner excluded by the condition; but they had, in fact, merely given him a permission subject to a condition; and he had not obeyed it. The court must, therefore, give effect to the technical point taken, and hold that the authority could not prosecute the builder until they had made an order prohibiting the use in question of the premises on the ground that he was using the land otherwise than in accordance with the terms of the permission. The conviction must be quashed.

ATKINSON and OLIVER, JJ., agreed.

COUNSEL: *J. M. Kennan*, for the builder; *Baucher*, for the prosecutor.

SOLICITORS: *Field, Roscoe & Co.*, for *Berkson & Berkson*, Birkenhead; *Sharpe, Pritchard & Co.*, for *Clerk to Hoylake Urban District Council.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DRAFT AND PROVISIONAL RULES, 1947

SUPREME COURT, ENGLAND—FUNDS

THE SUPREME COURT FUNDS PROVISIONAL RULES, 1947

DATED SEPTEMBER 25, 1947

The Lords Commissioners of the Great Seal, with the concurrence of the Treasury, in exercise of the powers conferred upon them by sections 146 and 211 of the Supreme Court of Judicature (Consolidation) Act, 1925,* and all other powers enabling them in this behalf, propose to make the following Rules:—

1. In these Rules a Rule referred to by number means the Rule so numbered in the Supreme Court Funds Rules, 1927,† as amended, the Appendix means the Appendix to those Rules and a Form referred to by number means the Form so numbered in the said Appendix.

2. In paragraph (1) (*c*) of Rule 30 the words "Rule 40 (1)" shall be substituted for the words "Rule 40" and the words "Rule 40 (*2*)" shall be substituted for the words "Rule 41."

3. In Rule 32 the first sub-paragraph of paragraph (1) shall be revoked and the following shall be substituted therefor:—

"In the King's Bench Division directions for lodgment of money shall be issued by the Accountant-General upon receipt of a request signed by or on behalf of the person desiring to make the lodgment. The request shall specify the title of the cause or matter to the credit of which the money is to be placed and the circumstances in which it is being lodged, and shall be in Form No. 23."

4. Rule 34 shall be revoked and the following Rule shall be substituted therefor and shall stand as Rule 34:—

"34. (1) In the Probate Divorce and Admiralty Division directions for lodgment of money shall be issued by the Accountant-General upon receipt of a request signed by or on behalf of the person desiring to make the lodgment. The request shall specify the title of the cause or matter (which in Admiralty actions shall include the name of the ship) to the credit of which the money is to be placed and the circumstances in which it is being lodged, and shall be in Form No. 24.

(*2*) Directions for the lodgment of money representing the proceeds of any sale effected by the Admiralty Marshal shall be issued by the Accountant-General upon receipt of a request from the Admiralty Marshal in Form No. 24A."

5. Rule 35 shall be revoked and the following Rule shall be substituted therefor and shall stand as Rule 35:—

"35. When the receipt of money lodged under Rule 32 (*2*) and Rule 34 has been certified to the Accountant-General by the bank he shall notify (*a*) in the case of lodgments under Rule 32 (*2*), the Registrar of the District Registry concerned, (*b*) in the case of lodgments under Rule 34, the Registry concerned or the Admiralty Marshal, or (*c*) in the case of lodgments under Rule 106 (*c*) the Registrar of the Railway and Canal Commission."

6. Rule 40 shall be re-numbered and shall stand as paragraph (1) of Rule 40.

7. Rule 41 shall be re-numbered and shall stand as paragraph (*2*) of Rule 40.

8. The following Rule shall be inserted after Rule 40 and shall stand as Rule 41:—

"41. When it is desired to lodge money in Court under Order III or Order XLII of the Rules of the Supreme Court, pursuant to the Exchange Control Act, 1947,‡ the lodgment shall be made on a direction issued by the Accountant-General upon receipt of a request signed by or on behalf of the person desiring to make the lodgment. The request shall specify the title of the cause or matter to the credit of which the money is to be placed and the circumstances in which it is being lodged, and shall be in Form No. 35.

The lodgment shall be made upon a notice to be produced at the Bank by the person making it, and the receipt for the lodgment shall be given thereon."

9. Rule 44 shall be amended as follows:—

(*a*) In paragraph (1) the figure "35" shall be deleted and the following words shall be inserted after the words "unsound mind."

"or (*e*) except with the permission of the Treasury where the payment is to or for the credit of a person resident outside the scheduled territories as defined by the Exchange Control Act, 1947, or the defendant is acting by order or on behalf of a person so resident."

(*b*) The following paragraph shall be added and shall stand as paragraph (4):—

"(4) Money lodged under Order III or Order LXII of the Rules of the Supreme Court, pursuant to the Exchange Control Act, 1947, shall be paid by the Accountant-General to the person entitled thereto upon a request for payment in Form No. 38 and upon production of the original receipt and notice:

Provided that no payment shall be made without the permission of the Treasury."

10. In paragraph (7) of Rule 45 the word "and" shall be inserted after the words "Prevention of Fraud (Investments) Act, 1939" and the words "shall be sufficient authority to the Accountant-General to invest the money" shall be deleted and the following words shall be substituted therefor:—

"it may be invested by the Accountant-General on the request in writing of the depositor."

* 15 & 16 Geo. 5, c. 49. † S.R. & O. 1927 (No. 1184) p. 1638.
‡ 10 & 11 Geo. 6, c. 14.

11. In Rule 70 the words " Rule 40 (1) " shall be substituted for the words " Rule 40 " and the words " Rule 40 (2) " shall be substituted for the words " Rule 41."

12. In paragraph (*b*) of Rule 74 the words " or to an account raised under Rule 41 " shall be inserted after the words " Bankruptcy Rules, 1915."

13. The following amendments shall be made in Rule 96 :—

(*a*) In paragraph (1) the words " Rule 40 (1) " shall be substituted for the words " Rule 40."

(*b*) The preparation and publication of the quinquennial list or statement of accounts required by Rule 96 shall be suspended for one quinquennial period, and accordingly the Accountant-General shall not prepare the list or statement which would, but for this paragraph, be prepared on or before the 1st day of March, 1948.

14. Forms Nos. 19, 20, 23, 24 and 24a in the Appendix shall be deleted and the following Forms shall be inserted in the Appendix in substitution for them :—

FORM No. 19

Rule 30 (1) (*d*)

(Cash Lodgment—Debt, Damages, etc.)

IN THE HIGH COURT OF JUSTICE—CHANCERY DIVISION

(I) Request for Direction for Lodgment

Ledger Credit (In Block Letters) Folio ..... } ..... v. .....19.....

The Accountant-General is hereby requested to issue a direction to the Bank to receive for the above-mentioned Ledger Credit the sum of £ : : which amount is paid in (complete one of the following statements in accordance with the circumstances, deleting the other) :—

(A) on behalf of defendant (state name).....
In Satisfaction of claim of above-named (state name of party) .....subject to Rule 1 of Order XXII of Rules of the Supreme Court, 1883.

(B) on behalf of defendant (state name).....
against claim of above-named (state name of party).....
.....with Defence setting up Tender subject to Rule 1 of Order XXII of Rules of the Supreme Court, 1883.

The said defendant* $\frac{\text{is}}{\text{is not}}$ acting by order or on behalf of a person resident outside the scheduled territories as defined by the Exchange Control Act, 1947.

Name of Solicitor on the other side
..... (Signature) .....
..... (Address) .....
* Delete as required. Solicitor for the.....
Dated .....19.....

(II) Accountant-General's Direction for Lodgment
(As in Form No. 14)

(III) Bank Certificate of Receipt
(As in Form No. 14)

FORM No. 20

Rule 30 (1) (*d*)

(Cash Lodgment—Security for Costs in Bankruptcy)

IN THE HIGH COURT OF JUSTICE—CHANCERY DIVISION

(I) Request for Direction for Lodgment

Ledger Credit Folio ..... } In Bankruptcy In re (state name of debtor) ..... No.....of 19.....Ex parte (state name of appellant).....

The Accountant-General is hereby requested to issue a direction to the Bank to receive for the above-mentioned ledger credit the sum of £ : : which amount is paid in under Rule 131 of the Bankruptcy Rules 1915 on notice of appeal in Bankruptcy dated the .....day of.....19.....

(Signature) .....
(Address).....
Date : .....19.....

(II) Accountant-General's Direction for Lodgment
(As in Form No. 14)

(III) Bank Certificate of Receipt
(As in Form No. 14)

FORM No. 23

Rule 32

(Cash Lodgment—Debt, Damages, etc.)

IN THE HIGH COURT OF JUSTICE—KING'S BENCH DIVISION

(I) Request for Direction for Lodgment

Ledger Credit (In Block Letters) Folio ..... } ..... v. .....19.....

The Accountant-General is hereby requested to issue a direction to the Bank to receive for the above-mentioned Ledger Credit the sum of £ : : which amount is paid in (complete one of the following statements in accordance with the circumstances, deleting the others) :—

(A) on behalf of defendant (state name).....
In Satisfaction of claim of above-named (state name of party) .....subject to Rule 1 of Order XXII of Rules of the Supreme Court, 1883.

(B) on behalf of defendant (state name).....
against claim of above-named (state name of party).....
.....with Defence setting up Tender subject to Rule 1 of Order XXII of Rules of the Supreme Court, 1883.

(C) Under Order dated.....day of.....19.....

(D) Under Fiat of Master endorsed hereon.....

The said defendant* $\frac{\text{is}}{\text{is not}}$ acting by order or on behalf of a person resident outside the scheduled territories as defined by the Exchange Control Act, 1947.

Name of Solicitor on the other side
..... (Signature) .....
..... (Address) .....
*Delete as required. Solicitor for the.....
Dated .....19.....

(II) Accountant-General's Direction for Lodgment
(As in Form No. 14)

(III) Bank Certificate of Receipt
(As in Form No. 14)

FORM No. 24

Rule 34 (1)

(Cash Lodgment)

IN THE HIGH COURT OF JUSTICE—PROBATE DIVORCE AND ADMIRALTY DIVISION

(I) Request for Direction for Lodgment

Ledger Credit (In Block Letters) Folio ..... }

The Accountant-General is hereby requested to issue a direction to the Bank to receive for the above-mentioned Ledger Credit the sum of £ : : which amount is paid in for (state such particulars as may be required) .....
(Signature) .....
(Address) .....
Date.....19.....

(II) Accountant-General's Direction for Lodgment
(As in Form No. 14)

(III) Bank Certificate of Receipt
(As in Form No. 14)

FORM No. 24 (*a*)

Rule 34 (2)

(Cash Lodgment—Admiralty Marshal)

IN THE HIGH COURT OF JUSTICE—PROBATE DIVORCE AND ADMIRALTY DIVISION

(I) Request for Direction for Lodgment

Ledger Credit Folio ..... }

The Accountant-General is hereby requested to issue a direction to the Bank to receive for the above-mentioned Ledger Credit the sum of £ : : being the gross proceeds of the sale of .....
.....
(Signature) .....
Date.....19..... Admiralty Marshal

(II) Accountant-General's Direction for Lodgment
(As in Form No. 14)

(III) Bank Certificate of Receipt
(As in Form No. 14)

15. In Form No. 30 in the Appendix the words " Rule 40 (2) " shall be substituted for the words " Rule 41."

16. In Form No. 35 (Chancery) and Form No. 36 (King's Bench) in the Appendix the words " Form No. 35 (Chancery) " shall be omitted from the heading and the following Form shall be inserted after Form No. 34 and shall stand as Form No. 35.

FORM No. 35

Rule 41

(Cash Lodgment under Exchange Control Act, 1947)

IN THE HIGH COURT OF JUSTICE.....DIVISION

(I) Request for Direction for Lodgment

Ledger Credit Folio ..... }

The Accountant-General is hereby requested to issue a direction to the BANK to receive from.....
the sum of £ : : which sum is paid in under Order.....
Rule.....of the Rules of the Supreme Court pursuant to the Exchange Control Act, 1947.
Date.....19.....
(Signature).....
(Address).....
Name of Solicitor on the other side
..... Solicitor for .....
..... Sheriff .....
.....

Where the lodgment is made pursuant to Order 3 Rule 7 the following Certificate must be given.

I certify that the lodgment to be effected under the above request is within the time limited by Order 3 Rule 7 of the Rules of the Supreme Court.
Date.....19.....
(Signature).....
A member of the Firm of.....
Solicitor for.....

(II) Accountant-General's Direction for Lodgment
(As in Form No. 14)

(III) Bank Certificate of Receipt
(As in Form No. 14)

17. Forms Nos. 36, 37 and 38 in the Appendix shall be deleted and the following Forms shall be inserted in the Appendix in substitution for them :—

FORM No. 36

Rule 44 (1)

IN THE HIGH COURT OF JUSTICE : DIVISION

(I) Request for payment of Money lodged or appropriated in satisfaction of claim under Rule 1 or Rule 8 or Order XXII

Ledger Credit }
Folio ..... }

To the Accountant-General, Royal Courts of Justice, W.C.2.

I hereby notify that the sum of £ : : paid into Court to the above Ledger Credit has been accepted by the Plaintiff in satisfaction of the claim in respect of which it is paid in and I declare that due notice has been given of such acceptance thereof within the time limited by Order XXII Rule 2 and I request that payment of the said sum may be made to

*(1) Me, the Plaintiff.....
*(2) Mr. ..... of† .....
The Solicitor to me the Plaintiff

‡Signature of Witness ..... (Signature)§ .....
Address ..... (Address) .....
Occupation‖ .....
‡Signature of Witness ..... (Signature)§ .....
Address ..... (Address) .....
Occupation‖ ..... Date .....19.....

CERTIFICATE TO BE SIGNED IN ALL CASES BY THE SOLICITOR FOR THE PLAINTIFF.

I certify that the payment above requested is not a payment to or for the credit of a person resident outside the scheduled territories as defined by the Exchange Control Act, 1947.

Date.....19..... (Signature).....
Solicitor for .....

N.B.—This request must be accompanied by the original receipt and notice and a copy of the notice of acceptance. The request may be signed by the Solicitor only if payment is to be made to the Plaintiff. If the Plaintiff is to be paid, his address must be inserted at (1) and he must sign the request for remittance. The Certificate must be signed with the personal signature of the Solicitor.

(II) Request for Remittance by Post.

If remittance by post is required the Plaintiff or the Solicitor as the case may be should complete the following request.

Date.....19.....

I request that the above sum of £ : : may be remitted to me by post at the above address by cheque crossed to my/our account at.....Bank.

Signature.....
(In the case of a firm one partner to sign as " A partner in the firm of.....")

* Erase (1) or (2) as the case may be.
† Full postal address.
‡ If this request is signed out of the United Kingdom but within the British Dominions, the witness must be a recognised Imperial or Colonial Official or a Notary Public. If signed in a Foreign State, the witness must be a British consular officer or other authority or a foreign notary public or other foreign official who should in either case affix his official seal (if any).
§ In the case of a firm, one partner to sign his own name adding " a partner in the firm of " etc.
‖ A clerk or employee should state the name of his employer.

FORM No. 37

Rule 44 (1)

IN THE HIGH COURT OF JUSTICE .....DIVISION

(I) Request for payment to a Company of money lodged or appropriated in satisfaction of claim under Rule 1 or Rule 8 of Order XXII

Ledger Credit }
Folio ..... }

To the Accountant-General, Royal Courts of Justice, W.C.2.

We hereby notify that the sum of £ : : paid into Court to the above Ledger Credit has been accepted by the Plaintiffs in satisfaction of the claim in respect of which it is paid in and we declare that due notice has been given of such acceptance thereof within the time limited by Order XXII Rule 2 and we request that payment of the said sum may be made to

(1) Us, the Plaintiffs (Delete (1) or (2) as the case may be).....
(2) Mr.....of (full postal address).....
.....the Solicitor to us, the Plaintiffs.

The Seal of the above-named Company was duly affixed hereto in our presence this.....day of.....19.....

Seal

Director's Signature .....
Director's Signature .....
Secretary's Signature .....
Address of Company.....

CERTIFICATE TO BE SIGNED IN ALL CASES BY THE SOLICITOR FOR THE PLAINTIFFS.

I certify that the payment above requested is not a payment to or for the credit of a person resident outside the Scheduled Territories as defined by the Exchange Control Act, 1947.

Date.....19..... (Signature).....
Solicitor for .....

(II) Request for Remittance by Post

If remittance by post is desired the Solicitor or the company as the case may be should complete the following request which, in the case of the Company, may be signed by the Secretary.

Date.....19.....

I request that the above sum of £ : : may be remitted to me by post at the above address by cheque crossed to my/the Company's account at (insert name of payees bank).....
.....Bank.

Signature .....
Secretary of .....
(In the case of a Solicitor one partner of the firm to sign as " A partner in the firm of.....")

FORM No. 38

Rule 44 (4)

IN THE HIGH COURT OF JUSTICE.....DIVISION

(I) Request for payment of money lodged on request pursuant to Rules of the Supreme Court and the Exchange Control Act, 1947

Ledger Credit }
Folio ..... }

Date.....19.....

To the Accountant-General, Royal Courts of Justice, W.C.2.

I/We hereby request payment of the sum of £ : : paid into Court to the above ledger credit on the.....day of .....19.....under Order.....Rule.....of the Rules of the Supreme Court pursuant to the Exchange Control Act, 1947.

†Witness ..... *(Signature) .....
Address ..... (Address) .....
Occupation .....
†Witness ..... *(Signature) .....
Address ..... (Address) .....
Occupation .....

(II) Request for Remittance by Post

I/We authorise and request you to remit by post to (insert name of bank).....Bank of (full postal address)
.....whose receipt shall be your full and sufficient discharge, the above-mentioned sum of £ : :
by cheque made payable to the said bank for the credit of my/our account at the (name of bank if other than above).....
.....Bank of (address).....
*(Signature) .....

18. These Rules may be cited as the Supreme Court Funds Provisional Rules, 1947, and the Supreme Court Funds Rules, 1927, as amended, shall have effect as further amended by these Rules.

* In the case of a firm one partner to sign his own name adding " a partner in the firm of.....".
† If this request is signed out of the United Kingdom but within the British Dominions, the witness must be a recognised Imperial or Colonial Official or a notary public. If it is signed in a Foreign State, the witness must be a British Consular Officer or other authority or a foreign notary public or other foreign official who should in either case affix his seal. A clerk or employee should state the name of his employer.
N.B.—This request must be accompanied by the original receipt and notice.

And the Lords Commissioners of the Great Seal, with the concurrence of the Treasury, in exercise of the power conferred on them by section 2 of the Rules Publication Act, 1893,‡ hereby certify that on account of urgency these Rules should come into operation on the 1st day of October, 1947, and hereby make the said Rules to come into operation on that day as Provisional Rules.

Dated the 25th day of September, 1947.

Goddard, C.J., *F. E. Pritchard*, } Lords Commissioners of the Great Seal.

Wm. Hannan, *Joseph Henderson*, } Lords Commissioners of His Majesty's Treasury.

‡ 56 & 57 Vict. c. 66.

RECENT LEGISLATION

Statutory Rules and Orders, 1947

No. 2090. **Coal Industry Nationalisation** (Superannuation) Regulations. September 25.

No. 2077. **Electricity** (Foreign Investments) Regulations. September 24.

No. 2079. Electricity (Information) Regulations. September 24.

No. 2078. Electricity (Power Station and Electricity Holding Companies) Regulations. September 24.

No. 2076. Electricity (Stockholders' Representatives) Regulations. September 24.

No. 2034. **Exchange Control** (Channel Islands) Order in Council. September 13.

No. 2066. Exchange Control (Isle of Man) Order in Council. September 13.

No. 2098. **Trading with the Enemy** Licence. September 25.

No. 2088. Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (General) Order. September 25.

No. 2073. **Treasury Order** revoking Orders made under regs. 1 and 5A of the Defence (Finance) Regulations, 1939. September 26.

Draft and Provisional Rules, 1947

Supreme Court Funds Provisional Rules. September 25.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

Miss Eileen Agnes MacDonald has been appointed Assistant Recorder of Liverpool. She was called by the Middle Temple in 1926, and in 1940 became the first woman advocate to address an appeal to the House of Lords.

The Lord Chancellor has appointed Mr. Gerald Owen White, who, until the 30th September, 1947, had been acting as Registrar of the West London County Court, to be the Registrar of the Edmonton County Court as from the 1st October, 1947.

The Lord Chancellor has appointed Mr. Basil George Nichols, Registrar of the Bow County Court, to be, in addition, the Registrar of the Guildford County Court as from the 1st October, 1947, and from the same date he has relinquished his appointment as Registrar of the Edmonton County Court.

The Lord Chancellor has appointed Mr. John Faithful Penrhys Evans, who, until the 30th September, 1947, had been acting as Registrar of the Newquay County Court, to be the Registrar of the Leicester, Ashby de la Zouch and Loughborough County Courts and District Registrar in the District Registry of the High Court of Justice in Leicester, as from the 1st October, 1947.

The Lord Chancellor has appointed Mr. Charles William Bird and Mr. David Herbert Evans to be the Joint Liabilities Adjustment Officers of the London (Central), Birmingham, Brighton and Canterbury Liabilities Adjustment Offices as from 1st October, 1947. Mr. D. Freeman Coutts has ceased to be Liabilities Adjustment Officer in London and has resumed his duties as Registrar of the West London County Court in addition to his duties as Registrar of the Wandsworth County Court.

The following appointments are announced in the Colonial Legal Service: Mr. R. B. Brown to be Assistant Commissioner of Lands, Gold Coast; Mr. A. D. Farrell and Mr. A. M. F. Webb to be Legal Officers, Malaya.

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Oct. 6 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	108½	3 13 9	2 18 5
Consols 2½%	JAJO	83½	2 19 11	—
War Loan 3% 1955–59	AO	101½	2 19 1	2 15 5
War Loan 3½% 1952 or after	JD	103	3 8 0	2 17 0
Funding 4% Loan 1960–90	MN	111xd	3 12 1	2 19 4
Funding 3% Loan 1959–69	AO	100½	2 19 8	2 19 0
Funding 2½% Loan 1952–57	JD	100½	2 14 9	2 12 8
Funding 2½% Loan 1956–61	AO	97	2 11 7	2 15 3
Victory 4% Loan Av. life 18 years	MS	112½	3 11 1	3 1 8
Conversion 3½% Loan 1961 or after	AO	104½	3 7 0	3 1 6
National Defence Loan 3% 1954–58	JJ	102	2 18 10	2 12 9
National War Bonds 2½% 1952–54	MS	99½	2 10 4	2 12 2
Savings Bonds 3% 1955–65	FA	100½	2 19 8	2 18 6
Savings Bonds 3% 1960–70	MS	100	3 0 0	3 0 0
Treasury 3%, 1966 or after	JO	97½	3 1 6	—
Treasury 2½%, 1975 or after	AO	83½	2 19 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	97½	3 1 6	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	96	2 17 4	—
Redemption 3% 1986–96	AO	100½	2 19 8	2 19 7
Sudan 4½% 1939–73 Av. life 16 years	FA	108½	4 2 11	3 15 7
Sudan 4% 1974 Red. in part after 1950	MN	106½	3 15 1	—
Tanganyika 4% Guaranteed 1951–71	FA	103½	3 17 4	2 18 2
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	94½	2 12 11	3 7 11
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	107½	3 14 5	2 17 5
Australia (Commonw'h) 3½% 1964–74	JJ	103½	3 2 10	2 19 9
*Australia (Commonw'h) 3% 1955–58	AO	101	2 19 5	2 17 2
†Nigeria 4% 1963	AO	112½	3 11 1	3 0 1
*Queensland 3½% 1950–70	JJ	101	3 9 4	—
Southern Rhodesia 3½% 1961–66	JJ	105	3 6 8	3 1 1
Trinidad 3% 1965–70	AO	99½	3 0 4	3 0 8
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	94½	3 3 6	—
*Leeds 3½% 1958–62	JJ	103	3 3 1	2 17 8
*Liverpool 3% 1954–64	MN	101xd	2 19 5	2 16 8
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	93½	3 4 2	—
*London County 3½% 1954–59	FA	104½	3 7 0	2 15 8
*Manchester 3% 1941 or after	FA	94½	3 3 6	—
*Manchester 3% 1958–63	AO	101	2 19 5	2 17 7
Met. Water Board "A" 1963–2003	AO	93½	3 4 2	3 4 8
* Do. do. 3% "B" 1934–2003	MS	95½	3 2 10	3 3 1
* Do. do. 3% "E" 1953–73	JJ	98½	3 0 11	3 1 7
Middlesex C.C. 3% 1961–66	MS	101	2 19 5	2 18 2
*Newcastle 3% Consolidated 1957	MS	101	2 19 5	2 15 1
Nottingham 3% Irredeemable	MN	95xd	3 3 2	—
Sheffield Corporation 3½% 1968	JJ	107½	3 5 1	3 0 4
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	119	3 7 3	—
Gt. Western Rly. 4½% Debenture	JJ	120½	3 14 8	—
Gt. Western Rly. 5% Debenture	JJ	130½	3 16 8	—
Gt. Western Rly. 5% Rent Charge	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	126½	3 19 1	—
Gt. Western Rly. 5% Preference	MA	114½	4 7 4	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: Inland, £3; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance).

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